

INITIATIVE 746

I, Ralph Munro, Secretary of State of the State of Washington and custodian of its seal, hereby certify that, according to the records on file in my office, the attached copy of Initiative Measure No. 746 to the People is a true and correct copy as it was received by this office.

1 AN ACT Relating to drug offenses; reenacting and amending RCW
2 69.50.401; adding a new chapter to Title 70 RCW; creating a new
3 section; prescribing penalties; and providing an effective date.

4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** FINDINGS AND INTENT. (1) The people of
6 Washington state find as follows:

7 (a) Our jails and prisons are overcrowded as a result of
8 incarcerating nonviolent drug possession offenders. Incarcerating
9 these offenders forces our corrections and police systems to focus
10 limited resources on nonviolent offenders.

11 (b) Studies conducted by states which have replaced drug treatment
12 programs for incarceration have shown that treatment is more effective
13 at reducing drug-related crime and saves money.

14 (c) Imprisoning people for use of marijuana takes money from law
15 enforcement budgets which could be better used to pursue violent
16 offenders.

17 (2) Therefore, the people of Washington state intend to:

18 (a) Send nonviolent, simple drug possession offenders to treatment
19 programs rather than jail or prison; and

(b) Impose fines rather than jail sentences for simple possession of small amounts of marijuana; and

(c) Require the Washington state legislature to appropriate funds for a broad range of treatment programs to be paid for by savings from lower rates of incarceration and crime.

NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this section and RCW 9.94A.120 and 70.96A.020 apply throughout this chapter unless the context clearly requires otherwise.

(1) "Simple drug possession offense" means the nonviolent, unlawful possession, use, or transportation for personal use of any controlled substance defined in RCW 69.50.101(d). "Simple drug possession offense" does not include manufacturing, delivery, or possession with intent to deliver of any controlled substance.

(2) "Treatment" or "treatment program" means a program approved by the agency for persons found guilty of a simple drug possession offense which has as its sole purpose the rehabilitation of the offender and delivers services of a type and in a manner that has been shown to advance the rehabilitative purposes of this chapter. A treatment program must be operated in facilities other than correctional facilities and may include or have as one of its components one or more of the following: Diagnostic evaluation, outpatient treatment and/or counseling, halfway house treatment, drug replacement medical treatment, chemical dependency education and counseling, drug use prevention and harm reduction counseling, limited intensive inpatient or residential drug treatment as needed to address special detoxification or relapse situations or to treat persons gravely disabled by alcohol or other drugs, family counseling, social service care, vocational rehabilitation and career counseling, or literacy training. Drug testing may be a minor component of, but may not substitute for, a treatment program.

(3) "Treatment plan" means the documented recommendations of an appropriately trained treatment professional, following an assessment of the offender, identifying the least restrictive treatment programs reasonably calculated to assist the offender to end dependence on illegal drugs and avoid drug-related activities that are harmful to others.

(4) "Offender" means any person found guilty of a simple drug possession offense.

(5) "Agency" means the division of alcohol and substance abuse.

NEW SECTION. **Sec. 3.** POSSESSION OF CONTROLLED SUBSTANCES--
TREATMENT--EXCEPTIONS. (1)(a) Notwithstanding any other provision of
law, and except as provided in subsection (3) of this section and
section 4(2) of this act, no offender may be sentenced to incarceration
in any correctional facility as a result of having been found guilty of
a simple drug possession offense.

(b) Except as provided in subsections (2) and (3) of this section,
upon finding a person guilty of a simple drug possession offense, the
court shall require the offender to participate in and complete an
individualized treatment plan provided by the agency specifying one or
more treatment programs.

(c) Notwithstanding the requirement in this chapter that treatment
programs be operated in facilities other than correctional facilities,
the court may require and the agency accordingly shall provide
treatment to an offender while the offender is incarcerated for another
offense or after the offender is released from incarceration.

(d) Once the court requires participation in a treatment plan, the
court may require any offender who is reasonably able to do so to
contribute a specified amount to the cost of the offender's treatment
plan and shall impose such amount as a fine to be collected by the
court and paid to a treatment fund maintained by the agency.

(2) Subsection (1)(b) of this section does not apply to any person
found guilty of possession of forty grams or less of marijuana under
RCW 69.50.401(e).

(3) Subsection (1) of this section does not apply to:

(a) Any offender who refuses to abide by the conditions of a
required treatment plan; or

(b) Any offender who (i) has two separate convictions for simple
drug possession offenses, including any convictions that have been set
aside under section 5 of this act; (ii) has participated in two
separate treatment plans pursuant to subsection (1) of this section;
and (iii) is found by a court to be unamenable to treatment.

(4) Upon entering an order requiring the agency to provide a
treatment plan under subsection (1) of this section, the court shall
notify the agency, and the agency, at its sole discretion, shall
prepare an individualized treatment plan and forward it to the court
and the offender. Within seven days of receiving the treatment plan,

1 the court shall order the offender to participate in the individualized
2 treatment plan.

3 (5) No treatment plan required under subsection (1) of this section
4 may exceed twelve months.

5 NEW SECTION. **Sec. 4.** MODIFICATION OR REVOCATION OF TREATMENT.

6 (1) If, at any point during the course of the treatment plan, the
7 treatment program provider notifies the agency that the offender is
8 unamenable to the treatment being provided but may be amenable to other
9 treatments or programs, the agency may modify the treatment plan.

10 (2) If, at any point during the course of the treatment plan, the
11 treatment program provider notifies the agency that the offender is
12 unamenable to the treatment being provided and the agency determines
13 that the offender is unamenable to all other forms of treatment, the
14 agency may move the court to revoke treatment. At the revocation
15 hearing, the court shall hear all relevant testimony, including, if
16 possible, the testimony, which may be telephonic, of at least one
17 licensed physician trained and experienced in the field of substance
18 abuse treatment, who has examined the offender. The court may revoke
19 treatment if it finds that the grounds for revocation have been
20 established by clear, cogent, and convincing proof. If treatment is
21 revoked, the court may sentence the offender to incarceration pursuant
22 to otherwise applicable law without regard to the provisions of this
23 chapter.

24 NEW SECTION. **Sec. 5.** DISMISSAL OF CHARGES UPON SUCCESSFUL
25 COMPLETION OF TREATMENT. When an offender has completed a treatment
26 plan required under section 3 of this act, the agency shall notify the
27 court that ordered the treatment plan. Except as provided in section
28 3(3)(b) of this act, the court shall set aside the conviction for
29 simple drug possession and dismiss the indictment or information
30 against the offender. The court records of the conviction may not be
31 expunged.

32 NEW SECTION. **Sec. 6.** TREATMENT FUNDING. The legislature shall
33 appropriate funds to carry out the provisions of this chapter.

34 NEW SECTION. **Sec. 7.** PROGRAM AUTHORITY. (1) Consistent with RCW
35 70.96A.040, the agency shall establish by all appropriate means a broad

1 range of approved prevention and treatment programs throughout the
2 state in order to ensure a continuum of prevention and treatment
3 services for persons convicted of simple drug possession offenses.

4 (2) Notwithstanding any other provision of law, the agency may
5 authorize and regulate drug treatment programs based in hospitals and
6 physicians' offices providing diverse medical services using medically
7 established best practices for medical drug treatment and request any
8 required licenses from agencies of the federal government.

9 (3) The agency shall have the authority given the department under
10 chapter 70.96A RCW to administer the provisions of this chapter.

11 **Sec. 8.** RCW 69.50.401 and 1998 c 290 s 1 and 1998 c 82 s 2 are
12 each reenacted and amended to read as follows:

13 (a) Except as authorized by this chapter, it is unlawful for any
14 person to manufacture, deliver, or possess with intent to manufacture
15 or deliver, a controlled substance.

16 (1) Any person who violates this subsection with respect to:

17 (i) a controlled substance classified in Schedule I or II which is
18 a narcotic drug or flunitrazepam classified in Schedule IV, is guilty
19 of a crime and upon conviction may be imprisoned for not more than ten
20 years, or (A) fined not more than twenty-five thousand dollars if the
21 crime involved less than two kilograms of the drug, or both such
22 imprisonment and fine; or (B) if the crime involved two or more
23 kilograms of the drug, then fined not more than one hundred thousand
24 dollars for the first two kilograms and not more than fifty dollars for
25 each gram in excess of two kilograms, or both such imprisonment and
26 fine;

27 (ii) amphetamine or methamphetamine, is guilty of a crime and upon
28 conviction may be imprisoned for not more than ten years, or (A) fined
29 not more than twenty-five thousand dollars if the crime involved less
30 than two kilograms of the drug, or both such imprisonment and fine; or
31 (B) if the crime involved two or more kilograms of the drug, then fined
32 not more than one hundred thousand dollars for the first two kilograms
33 and not more than fifty dollars for each gram in excess of two
34 kilograms, or both such imprisonment and fine. Three thousand dollars
35 of the fine may not be suspended. As collected, the first three
36 thousand dollars of the fine must be deposited with the law enforcement
37 agency having responsibility for cleanup of laboratories, sites, or
38 substances used in the manufacture of the methamphetamine. The fine

1 moneys deposited with that law enforcement agency must be used for such
2 clean-up cost;

3 (iii) any other controlled substance classified in Schedule I, II,
4 or III, is guilty of a crime and upon conviction may be imprisoned for
5 not more than five years, fined not more than ten thousand dollars, or
6 both;

7 (iv) a substance classified in Schedule IV, except flunitrazepam,
8 is guilty of a crime and upon conviction may be imprisoned for not more
9 than five years, fined not more than ten thousand dollars, or both;

10 (v) a substance classified in Schedule V, is guilty of a crime and
11 upon conviction may be imprisoned for not more than five years, fined
12 not more than ten thousand dollars, or both.

13 (b) Except as authorized by this chapter, it is unlawful for any
14 person to create, deliver, or possess a counterfeit substance.

15 (1) Any person who violates this subsection with respect to:

16 (i) a counterfeit substance classified in Schedule I or II which is
17 a narcotic drug, or flunitrazepam classified in Schedule IV, is guilty
18 of a crime and upon conviction may be imprisoned for not more than ten
19 years, fined not more than twenty-five thousand dollars, or both;

20 (ii) a counterfeit substance which is methamphetamine, is guilty of
21 a crime and upon conviction may be imprisoned for not more than ten
22 years, fined not more than twenty-five thousand dollars, or both;

23 (iii) any other counterfeit substance classified in Schedule I, II,
24 or III, is guilty of a crime and upon conviction may be imprisoned for
25 not more than five years, fined not more than ten thousand dollars, or
26 both;

27 (iv) a counterfeit substance classified in Schedule IV, except
28 flunitrazepam, is guilty of a crime and upon conviction may be
29 imprisoned for not more than five years, fined not more than ten
30 thousand dollars, or both;

31 (v) a counterfeit substance classified in Schedule V, is guilty of
32 a crime and upon conviction may be imprisoned for not more than five
33 years, fined not more than ten thousand dollars, or both.

34 (c) It is unlawful, except as authorized in this chapter and
35 chapter 69.41 RCW, for any person to offer, arrange, or negotiate for
36 the sale, gift, delivery, dispensing, distribution, or administration
37 of a controlled substance to any person and then sell, give, deliver,
38 dispense, distribute, or administer to that person any other liquid,
39 substance, or material in lieu of such controlled substance. Any

1 person who violates this subsection is guilty of a crime and upon
2 conviction may be imprisoned for not more than five years, fined not
3 more than ten thousand dollars, or both.

4 (d) It is unlawful for any person to possess a controlled substance
5 unless the substance was obtained directly from, or pursuant to, a
6 valid prescription or order of a practitioner while acting in the
7 course of his or her professional practice, or except as otherwise
8 authorized by this chapter. Any person who violates this subsection is
9 guilty of a crime, and upon conviction may be imprisoned for not more
10 than five years, fined not more than ten thousand dollars, or both,
11 except as provided for in subsection (e) of this section.

12 (e) Except as provided for in subsection (a)(1)(iii) of this
13 section any person found guilty of possession of forty grams or less of
14 marihuana shall be guilty of a (~~misdemeanor~~) class 2 civil infraction
15 under chapter 7.80 RCW, and civil fines assessed shall be deposited in
16 a treatment fund maintained by the division of alcohol and substance
17 abuse.

18 (f) It is unlawful to compensate, threaten, solicit, or in any
19 other manner involve a person under the age of eighteen years in a
20 transaction unlawfully to manufacture, sell, or deliver a controlled
21 substance. A violation of this subsection shall be punished as a class
22 C felony punishable in accordance with RCW 9A.20.021.

23 This section shall not apply to offenses defined and punishable
24 under the provisions of RCW 69.50.410.

25 NEW SECTION. Sec. 9. CODIFICATION. Sections 1 through 7 of this
26 act constitute a new chapter in Title 70 RCW.

27 NEW SECTION. Sec. 10. EFFECTIVE DATE--PROSPECTIVE APPLICATION.
28 This act takes effect July 1, 2001. This act applies prospectively
29 only and not retroactively. It applies only to crimes committed on or
30 after July 1, 2001.

31 NEW SECTION. Sec. 11. CAPTIONS. Captions used in this act are
32 not part of the law.

33 NEW SECTION. Sec. 12. SEVERABILITY. If any provision of this act
34 or its application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

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